



Informational Guideline Release

Property Tax Bureau
Informational Guideline Release (IGR) No. 03-209
August 2003

(Supersedes IGR 99-206)

SUPPLEMENTAL TAX ASSESSMENT ON NEW CONSTRUCTION

**Chapter 46 §§41 and 42 of the Acts of 2003
(Amending G.L. Ch. 59 §2D)**

This Informational Guideline Release (IGR) informs local officials that effective immediately the law that allows supplemental tax assessments on the value of certain improvements to real estate constructed after January 1 upon issuance of an occupancy permit applies in all cities and towns that do not notify the Department of Revenue of its rejection. The law is no longer a local acceptance statute.

Topical Index Key:

Abatements and Appeals
Assessment Administration
Tax Bills

Distribution:

Assessors
Collectors
Accountants/Auditors
Mayors/Selectmen
City/Town Managers/Exec. Secys.
Finance Directors
Finance Committees
City/Town Councils
City Solicitors/Town Counsels

(Supersedes IGR 99-206)

SUPPLEMENTAL TAX ASSESSMENT ON NEW CONSTRUCTION

**Chapter 46 §§41 and 42 of the Acts of 2003
(Amending G.L. Ch. 59 §2D)**

SUMMARY:

Under G.L. Ch. 59 §2D, cities and towns may make a pro rata tax assessment on the value of certain improvements to real estate made after the January 1 assessment date. The assessment is made only on those parcels for which an occupancy permit is issued during the fiscal year and the new construction increases the parcel value by over 50 percent. This assessment is in addition to the regular property tax that is assessed on the property based on its January 1 status. It is calculated by applying the tax rate to the value of the improvement and pro-rating that amount over the remainder of the fiscal year after the permit was issued. If the permit was issued between January 1 and June 30, a pro forma tax assessment may be imposed for the following fiscal year as well. In addition, the assessors must abate property taxes on any parcel in the community whenever it loses more than 50 percent of its value due to fire or other natural disaster after the assessment date. The purpose of this supplemental assessment is to provide the city or town with some of the real estate taxes that would have been due for the fiscal year if the new construction had existed on that year's assessment date.

Under a recent amendment, the statute **now applies automatically unless** the Department of Revenue is notified in writing by the selectmen, town council or city council, with the mayor's approval if required by law, of its rejection. Previously, the statute only applied if accepted by voter referendum.

Assessors must assess supplemental assessments on any qualifying new construction for which an occupancy permit issues, and grant abatements on any qualifying property loss that occurs, after **July 31, 2003**, the effective date of the amendment, unless their city or town rejects the statute and notifies the Department. **Any community that does not intend to implement the statute for FY04 should notify the Department of its rejection by the time it sets its FY04 tax rate.** See Section I below.

These guidelines amend Section I of the guidelines issued when G.L. Ch. 59 §2D was enacted to reflect the new rejection process. See Property Tax Bureau Informational Guideline Release No. 99-206, *Supplemental Tax Assessment on New Construction* (April 1999). Examples have also been updated, but the other sections are unchanged.

GUIDELINES:

I. APPLICATION OF STATUTE

Assessors must make supplemental assessments and grant abatements on qualifying parcels **unless the Department of Revenue has been notified that their city or town has rejected** the provisions of G.L. Ch. 59 §2D.

A. Decision to Reject

The decision to reject application of the statute is made by majority vote of the selectmen, town council or city council, with the approval of the mayor if required by law. The rejection will apply until rescinded. See Section I-D below.

A city or town that had previously accepted the statute may reject it in this manner at any time. The community does not need to wait a minimum of three years before changing its decision because the statute is no longer a local acceptance provision subject to G.L. Ch. 4 §4B.

B. Notice of Rejection

The Department of Revenue **must be notified** in writing of the rejection for it to be effective. To do so, the municipal clerk should submit the attached "Notice of Rejection," with a certified copy of the vote to the Bureau of Accounts.

C. Effective Fiscal Year

The vote and notification should ordinarily be made before the beginning of the fiscal year the rejection is to take effect so that the assessors and collector can properly plan in the event implementation is required. In all cases, the vote should **expressly** state the fiscal year the rejection takes effect. The following language is recommended for the vote:

VOTED: That the city/town of _____ reject the provisions of G.L. Ch. 59 §2D, which impose a supplemental property tax assessments on certain improvements to real estate constructed after January 1 once an occupancy permit is issued, for fiscal years that begin on or after July 1, _____.

D. Revocation of Rejection

A community may rescind its rejection at any time.

Rescission is also by majority vote of the selectmen, town council or city council, with the approval of the mayor if required by law, and written notice must be given to the Department to be effective. See the attached "Notice of Rescission." The vote and notice should be made before the beginning of the fiscal year the rescission is to take effect to allow the assessors and collector sufficient time to plan for implementation. The following language is recommended for the vote:

VOTED: That the city/town of _____ rescind its vote of _____, _____ to reject the provisions of G.L. Ch. 59 §2D and make those provisions applicable in the city/town for fiscal years that begin on or after July 1, _____.

II. SUPPLEMENTAL ASSESSMENTS

A supplemental tax assessment is made on a real estate parcel for the fiscal year whenever (1) a temporary or permanent occupancy permit is issued for that parcel during that fiscal year and (2) the new construction or improvement made after the annual assessment for the fiscal year has increased the assessed value of the parcel by over 50 percent. In some cases, a supplemental tax assessment may be made for the following fiscal year as well.

A. Occupancy Permits

Assessments are triggered by the issuance of a temporary or permanent occupancy permit. Therefore, the assessors and building inspectors will have to develop a system for ensuring that the assessors' office receives timely notification of all occupancy permits issued.

B. Assessment

1. Pro Rata Supplemental Assessment

For the fiscal year in which the occupancy permit is issued, any supplemental tax assessment will be pro-rated based on the number of days left in the fiscal year after the permit issued. The assessment is based on the increased valuation that results from the parcel's being improved by new construction after the regular tax assessment on the property was determined for that fiscal year. An assessment may be made only if the value of the parcel, as improved by the new construction, is more than 50 percent higher than the assessed value for the year. No assessment is made if the construction results in a 50 percent or less increase in the valuation of the parcel.

The pro rata assessment is computed by applying the tax rate for the current fiscal year, *i.e.*, the fiscal year in which the occupancy permit is issued, to the value of the improvement and multiplying the result by a fraction.

- a. The value of the improvement is the difference between (1) the assessed valuation of the parcel for the current fiscal year, and (2) the valuation of the parcel as improved, *i.e.*, the assessed valuation that the parcel would have had if the improvement had existed on that year's assessment date.
- b. The numerator of the fraction is the number of days remaining in the fiscal year after the permit was issued and the denominator is 365.

Example 1

A parcel of vacant residential land is assessed for \$25,000 as of January 1, 2003, at a FY04 tax rate of \$10.00. On April 1, 2004, an occupancy permit is issued after construction of a new house. If the house had existed when the FY04 assessment was determined, the assessed valuation of the parcel would have been \$130,000. Here the value of the parcel with the improvement (\$130,000) is more than 50% of the FY04 assessed valuation of the parcel (\$25,000). A FY04 pro rata supplemental tax assessment is made on the value of the improvement as follows:

$$(\$105,000 \times \$10.00/1000) \times 90/365 = \$258.90$$

Example 2

A parcel with a house is assessed for \$200,000 as of January 1, 2003, at a FY04 tax rate of \$10.00. During FY04, the house is torn down and a larger, modern house is built. An occupancy permit for the new house is issued on April 1, 2004. If the new house had existed when the FY04 assessment was determined, the assessed valuation of the parcel would have been \$350,000. Here the value of the parcel with the improvement (\$350,000) is also more than 50% of the FY04 assessed valuation of the parcel (\$200,000) so a FY04 pro rata supplemental tax assessment is made on the value of the improvement as follows:

$$(\$150,000 \times \$10.00/1000) \times 90/365 = \$369.87$$

2. Pro Forma Supplemental Assessment

If the permit is issued between January 1 and June 30, the parcel may also be subject to a full pro forma supplemental tax assessment for the following fiscal year unless the community has adopted Chapter 653 §40 of the Acts of 1989. In that case, the value of the improvement will already be included in the following year's regular property tax assessment and therefore, only a pro rata assessment could be made for the fiscal year in which the permit was issued.

Here, the assessment is based on the increased valuation that results from the parcel being improved by new construction after the regular tax assessment on the property was determined for the fiscal year of the pro forma assessment, *i.e.*, for the next fiscal year. Again, an assessment may be made only if the value of the parcel with the improvement is more than 50 per cent higher than the assessed value for that particular year. Therefore, both the improved valuation and the assessed valuation of the parcel may differ from those used to determine the pro rata assessment depending on when the construction occurs and the community revalues.

The pro forma assessment is computed by applying the next fiscal year's tax rate to the value of the improvement for that year. The value of the improvement is the difference between (1) the assessed valuation of the parcel for the next fiscal year, and (2) the valuation of the parcel as improved, *i.e.*, the assessed valuation that the parcel would have had if the improvement had existed on that year's assessment date.

Example 3

The construction activity for the new house on the parcel of vacant land described in Example 1 all takes place after January 1, 2004 and the community does not revalue for FY04. In a community not adopting Ch. 653, the FY05 assessed valuation of the parcel would still be \$25,000 and the value of the parcel as improved would still be \$130,000. The value of the improved parcel (\$130,000) would also still be more than 50% of the FY05 assessed valuation of the parcel (\$25,000). Therefore, a FY05 pro forma supplemental tax assessment would be made on the value of the improvement using the FY05 tax rate of \$10.15 as follows:

$$\$105,000 \times \$10.15/1000 = \$1,065.75$$

Example 4

The construction activity for the new house on the parcel of vacant land described in Example 1 all takes place after January 1, 2004, but the non- Ch. 653 community revalues so the FY04 assessed valuation of the parcel is now \$40,000. In addition, the value of the improved parcel is now \$175,000. Since the value of the improved parcel (\$175,000) is more than 50% of the FY05 assessed valuation of the parcel (\$40,000), a FY05 pro forma supplemental tax assessment would be made on the value of the improvement using the FY05 tax rate of \$9.75 as follows:

$$\$135,000 \times \$9.75/1000 = \$1,316.25$$

Example 5

The new house on the parcel of vacant land described in Example 1 was about 75% complete before January 1, 2004 and the non-Ch. 653 community does not revalue for FY05. The FY05 assessed valuation of the parcel is now \$105,000, with the value of the rest of the house constructed after January 1 at \$25,000. Here, the assessed value of the parcel with the completed house (\$130,000) is not more than 50% of the FY2001 assessed valuation of the parcel (\$105,000). Therefore, no FY05 pro-forma supplemental tax assessment would be made.

3. Person Assessed

Supplemental tax assessments are made to the person(s) assessed the regular real estate tax on the parcel for the fiscal year of the supplemental assessment, *i.e.*, the record owner as of the applicable January 1 assessment date. Therefore, if a parcel subject to both a pro rata and pro forma supplemental tax assessment has had a change in ownership, the assessments could be made to different owners depending on when the transfer occurred.

4. Usage Classification and Tax Rate

In communities using multiple tax rates, the usage classification of properties on January 1 of the fiscal year of the supplemental tax assessment will generally govern the tax rate to apply. However, if the construction activity results in a change in classification, the assessors should use the tax rate that would have applied if the construction had been completed by January 1.

Example 6

A parcel of vacant land is classified as commercial property as of January 1, 2003 for FY04. During the fall of 2003, a ten-unit apartment building is constructed on the property. An occupancy permit is issued January 15, 2004. Any pro rata supplemental tax assessment made for FY04 would be computed using the residential tax rate.

5. Commitment and Warrant

a. Form and Content

The assessors must commit the supplemental tax assessments, with a warrant, to the collector. The commitment should be in the same form as the regular real estate commitment, but captioned to indicate it is for supplemental tax assessments under the provisions of G.L. Ch. 59 §2D, and should contain the same information. This includes, at a minimum, (1) the name of the assessed owner of the parcel as of January 1, (2) property identification, (3) the amount of the supplemental assessment and (4) the amount of each installment payment (See Section III-B below).

Separate commitments must be made for each year's supplemental assessments, whether pro rata or pro forma.

Regular real estate tax warrants may also be used if modified to indicate that they are for supplemental tax assessments under G.L. Ch. 59 §2D.

b. Deadline

There is no statutory deadline for committing the supplemental tax assessments, unlike omitted and revised assessments made under G.L. Ch. 59 §§75 and 76. Wherever possible, however, assessors should have all supplemental assessments for a particular fiscal year committed no later than the date of the actual commitment for the year the improvement becomes subject to regular real estate taxes.

Assessors should make a first commitment of supplemental assessments contemporaneously with, or shortly after, the actual tax commitment each fiscal year. That first commitment should include all (1) pro rata assessments for that year due to occupancy permits issued before the tax rate was set, and (2) pro forma assessments for the year due to permits issued between January 1 and June 30 of the previous fiscal year.

Thereafter, assessors should establish a monthly or other appropriate schedule for committing pro rata supplemental assessments triggered by occupancy permits issued after the tax rate is set. This will ensure the assessments are made in a timely fashion after the permit is issued.

III. COLLECTION OF ASSESSMENTS

The provisions of law regarding the procedures for issuing, mailing, paying and collecting property tax bills generally apply to supplemental tax assessments.

A. Bill Form and Content

After receiving the commitment, the collector will issue bills for the supplemental tax assessments. If a property is subject to a pro rata and pro forma supplemental assessment, separate bills must be issued for each year's assessment. The bill should show just the additional amount assessed. Regular real estate tax bills issued for the applicable year may be used to bill the supplemental assessment, but the bill or an enclosure should explain that the bill is for an assessment under G.L. Ch. 59 §2D.

B. Due Date and Interest

Supplemental tax assessments for a fiscal year are due at the same time and in the same number of installments as regular real estate assessments for that year. Therefore, if a parcel is subject to a pro rata and pro forma assessment, the assessments will be due at different times depending on when the bill for each fiscal year's assessment is mailed.

1. Semiannual Payment System

The first half of the supplemental bill is due on November 1, or 30 days after the supplemental bill was mailed, whichever is later. The second half is due May 1. Interest on delinquent first installments would be charged from October 1, or the date the supplemental bill was mailed, if later, and on delinquent second installments from April 1. If the bill is mailed on or after April 1, however, it is due in full 30 days from the date the bill was mailed and interest would be charged from the mailing date.

Example 7

The bill for a FY04 pro rata assessment is mailed on October 20, 2003. One half is due November 19, 2003 and the second half is due May 1, 2004.

Example 8

A parcel is assessed for both a FY04 pro rata and FY05 pro forma assessment. The FY04 pro rata bill is mailed on May 10, 2004. It is due in a single payment on June 9, 2004. The pro forma bill for FY05 is mailed on October 1, 2004. One half of that bill is due November 1, 2004 and the second half due May 1, 2005.

2. Quarterly Payment System

If the supplemental bill is mailed on or before December 31, the amount is payable in two equal installments due February 1 and May 1. Interest on delinquent installments would be charged from the due date. Supplemental bills mailed after December 31 are due May 1, or 30 days from the date the bill was mailed if later, and interest would be charged from the due date.

Example 9

The bill for a FY04 pro rata assessment is mailed on December 15, 2003. One half is due February 1, 2004 and the balance is due May 1, 2004.

Example 10

A parcel is assessed for both a FY04 pro rata and FY05 pro forma assessment. The FY04 pro rata bill is mailed on January 10, 2004. It is due in a single payment on May 1, 2004. The pro forma bill for FY05 is mailed on December 29, 2004. One half of that bill is due February 1, 2005 with the balance due May 1, 2005.

C. Collection

The same remedies available to the collector for collection of regular real estate taxes are available for collection of supplemental assessments, including a tax taking. The lien for the supplemental tax assessment arises as of the January 1 assessment date of the fiscal year the assessment relates to and terminates the same time as that year's real estate tax lien.

Collectors must list only those supplemental assessments actually committed on municipal lien certificates. However, a standard notation should be pre-printed on all municipal lien certificates that real estate parcels in the community are subject to supplemental tax assessments under G.L. Ch. 59 §2D.

IV. BUDGET AND ACCOUNTING PROCEDURES

A. Revenue

Revenue from supplemental tax assessments belongs to the general fund and is not part of the tax levy limited by Proposition 2½. The amount estimated to be received during the fiscal year should be itemized under the "Miscellaneous Non-recurring" line on Page 3 of the Recapitulation Sheet. Receipts in excess of that amount will close to surplus revenue at the end of the year and become part of the community's free cash upon certification by the Director of Accounts.

B. Tax Base Growth

The calculation of tax base growth for purposes of increasing the levy limit under Proposition 2½ is not affected. Once the improvements are subject to regular real estate taxes in the next fiscal year, they become part of that year's tax base growth.

C. Municipal Revenue Growth Factor

Revenue from supplemental tax assessments will not be used to calculate the municipal revenue factor. Revenue from the improvements will continue to be included in the calculation when they are subject to regular taxes and become part of the levy limit as growth.

V. ABATEMENT PROCESS

A. Abatement of Supplemental Assessments

The taxpayer may contest a supplemental tax assessment by filing an application for abatement with the assessors. The application is due the same day payment of the first installment of the supplemental assessment for that fiscal year is due. See Section III-B above. The assessors' decision on the application may be appealed in the same manner and by the same deadline as a decision on an application for an abatement of a regular property tax assessment.

Regular abatement application forms (State Tax Form 128) may be used by taxpayers to apply for an abatement of a supplemental tax assessment. An abatement should be processed in the same manner as an abatement of a regular real estate tax and charged to the overlay account for the fiscal year of the assessment. Forms used in processing any abatement, denial or deemed denial should be modified to indicate that the action relates to a supplemental tax assessment made under G.L. Ch. 59 §2D.

B. Abatements on Damaged Properties

1. Calculation of Abatement

The assessors must grant a pro rata abatement of the regular real estate tax assessed on a parcel whenever damage due to fire or natural disaster after the applicable assessment date results in a loss in value of more than 50 percent. The abatement is to be calculated in the same manner as a pro rata supplemental assessment, but on the amount of valuation lost instead, and then pro-rated for the balance of the fiscal year remaining after the fire or natural disaster.

If the damage occurs between January 1 and June 30, a pro forma abatement of the next year's real estate tax on the parcel must also be given, unless the community has adopted Chapter 653 §40 of the Acts of 1989, where the damage would already be reflected in the following year's regular property tax assessment.

Example 11

On April 1, 2004, a fire occurs that significantly damages the structure on a parcel. The FY04 assessment on the property was \$125,000. If the damage had existed when the FY04 assessment was determined on January 1, 2003, the parcel, as damaged, would have been assessed for \$35,000. A valuation of \$35,000 reflects a loss of more than 50% of the FY04 assessed valuation of \$125,000. Therefore, a pro rata abatement of the FY04 real estate tax is granted on the \$90,000 reduction in the value using the FY04 tax rate of \$10.00 as follows:

$$(\$90,000 \times \$10.00/1000) \times 90/365 = \$221.91$$

A pro forma abatement of the FY05 real estate tax must also be granted if there is at least a 50% loss in the FY05 assessed valuation, except in Ch. 653 communities where the damage would already be reflected in the actual tax assessment for that year. Here, assuming the non-Ch. 653 community did not revalue for FY05, there would still be at least a 50% loss in value, so an abatement would still be based on a \$90,000 valuation loss. If the FY05 tax rate is \$10.15, the abatement for the full fiscal year would be granted as follows:

$$\$90,000 \times \$10.15/1000 = \$913.50$$

If the community had revalued, however, the assessors would first have to determine the value of the damaged parcel using the FY051 valuation schedules. If the damaged parcel value reflects a loss of at least 50% of the FY05 assessed valuation of the undamaged parcel, then a pro forma abatement would still be granted, but it would be based on the difference between the assessed valuation of the undamaged parcel and the valuation of the damaged parcel, as determined using the new schedules.

2. Abatement Procedure and Deadline

The abatement may be made on the assessors' own motion or upon written application by the taxpayer. Before granting an abatement on their own motion, however, assessors with knowledge of damage should first try to obtain an application from the taxpayer. This will establish a timetable for the assessors' action and any taxpayer appeal. An application should be processed in the same manner and using the same forms as regular property tax abatements. However, the assessors' records should reflect that the abatement is authorized by G.L. Ch. 59 §2D. All abatements granted are charged to the overlay for the applicable fiscal year.

2. Reconstruction or Repair of Property

A rebuilt or repaired property is subject to a supplemental tax assessment if an occupancy permit is issued and the value of the parcel, as improved by the new construction, is more than 50 percent higher than the assessed valuation of the parcel, as abated.

(City/Town)

**NOTICE OF REJECTION
General Laws Chapter 59 §2D
(Supplemental Assessment of New Construction)**

The Commissioner of Revenue is hereby notified that the City/Town of _____, by vote of the Board of Selectmen, Town Council or City Council, with the Mayor's approval, on _____, _____, rejected the provisions of General Laws Chapter 59 §2D.

The rejection applies for fiscal years that begin on or after July 1, _____.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:

**Bureau of Accounts
Division of Local Services
P.O. Box 55490
Boston MA 02205-5490**

(City/Town)

**NOTICE OF RESCISSION
General Laws Chapter 59 §2D
(Supplemental Assessment of New Construction)**

The Commissioner of Revenue is hereby notified that the City/Town of _____, by vote of the Board of Selectmen, Town Council or City Council, with the Mayor's approval, on _____, _____, rescinded its vote on _____, _____ to reject the provisions of General Laws Chapter 59 §2D.

The provisions of G.L. Ch. 59 §2D will apply for fiscal years that begin on or after July 1, _____.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:

**Bureau of Accounts
Division of Local Services
P.O. Box 55490
Boston MA 02205-5490**